

Startups are not a sector of itself - they touch all aspects of our lives and businesses. European startups are an integral part of this transformation. We are the most powerful vehicle of innovation, creating over 4.52 million jobs in a diverse range of Europe's hubs. We form a unique symbiosis with traditional industries - helping them innovate and deliver better products and services for consumers. But how can we ensure that tomorrow's innovation can continue to happen in Europe? How can we improve and adapt European copyright law to match the development of new technologies? Here is what our community has to say.

No TDM is not an option!

Europe is the second largest region for data analytics. Startups can't tap into that potential unless the TDM exception is clarified to allow any person with legal access or a licence to conduct TDM.

Brand24 is an award winning startup from helping companies to find relevant information online - no TDM clarification would force operations from Poland to leave the EU.

Forget about ancillary copyright in news snippets!

It creates barriers to entry for startups and has a corrosive effect on the evolution of innovative news services. It also reduces media plurality by disproportionately harming small publishers.

The value of startups providing solutions to discover the most relevant and best news fell by over 30% after a neighbouring right was introduced in Germany whereas large news aggregators continued to receive licenses for free.

Protecting IP doesn't mean preventing innovation!

The new filtering and licensing obligations that undermine the E-commerce safe harbours would create uncertainty, increase legal risk, raise costs and bring technical challenges - a lethal mix for European startups. They create a burdensome obligation to enter into agreements with rightsholders, but do nothing to provide fairness and proportionality.

Startups in the EU created 4.3 Million jobs thanks to the certainty given by the E-Commerce directive. Investments, encouraged and supported by the EU, are growing considerably. Such a wide-ranging obligation would not only deter investments but discourage a new generation of European entrepreneurs to innovate and start businesses.

Protect innovation with an innovation exception!

Startups' innovation is impossible to anticipate. A fixed list of exceptions cannot accommodate the new use-cases that we explore everyday. We need a flexible and open-ended exception based on international norms, which can allow us to experiment without harming rightsholders.

Startups call for an innovation exception based on the "3-step test".

We don't want an SME carve out!

Startups are small now, but we plan to [scale up](#). Exemptions for small businesses work as a glass ceiling, discouraging investment and making scaling up unlikely.

We spoke [to startups all across Europe](#) and have experienced their passion and enthusiasm for Europe's future, including the creative economy and technologies. With the internet, everyone became a creator and a rightsholder. Startups underline that protecting intellectual property is important, but it should not come at the cost of limiting creative use of artistic works and new ideas. Our experience is that new technologies are an opportunity to create a more interconnected, democratic and consumer-driven creative sector. News aggregators, crowdfunding platforms and data analytics startups are not looking for a free ride, they stand ready to contribute fairly to the creative value chain.

We think the European Commission proposal for a Directive on copyright has missed the opportunity to get us closer to a future-proof copyright regime. We need legislation that tears down barriers and allows new businesses to flourish. The open and flexible nature of Internet services should be safeguarded. This is not only in the interest of startups, but of companies of all size wishing to innovate.

Text and Data Mining

Article 3 (Recital 8ff): By creating a safe zone for scientific research, the Text & Data Mining (TDM) exception creates a legal uncertainty for anyone not covered within it i.e. innovative startups. Startups are at the forefront of discovering new insights, patterns and trends from complex data and in order to do that an incidental or technical copy of content needs to be made. This does not constitute the making available or individual reproduction of works but a merely technical copy for the purpose of TDM. Europe today is the second largest region for data analytics and is expected to grow further. The current wording effectively excludes startups from conducting TDM. Clarifying the exception to allow any person with legal access or a licence to conduct TDM and create clear conditions for startups in Europe to thrive.

- **Legal uncertainty:** Whether the analysis is conducted on rich data such as images or audiovisual material or on assembled raw data sets like meteorological or statistical data, this proposal creates legal uncertainty for all startups.
- **University spin-offs:** Every European university creates on average two spin-offs every year. Top universities like Oxford, Delft, [Technical University Munich](#) or [KU Leuven](#) many more. With a limited exception, innovative ideas born in European universities could no longer spin off as companies, limiting the incentives for universities to support innovative research and for curricula as a whole.
- **Unrealistic partnerships:** It is extremely difficult for startups to engage in public-private partnerships which are time intensive and nearly impossible to handle for small teams.

Filtering and licensing user uploaded content

Article 13 (Recital 38) User Uploaded Content: This article is problematic for the startups community in multiple ways. It creates an obligation to enter into agreements with rightsholders, however it does nothing to provide fairness, proportionality and legal certainty:

- **Disproportionate legal risk:** The lack of any distinction between works or ‘other subject matter’ forces any startup acting as a platform (blogging, e-commerce, Software as a Service, other integrated services) to stipulate agreements with all rightsholders - however many they may be. Startups have small teams and they have no way to assess or even conclude such agreements. This results in unpredictability and legal risk, which can be lethal for many startups. Also, the proposal does not address the actual problem: it is practically impossible for a startup to conclude a fair contract with a major rightsholder group due to the power imbalance.
- **Disproportionate cost/technical feasibility:** Effective content recognition technologies are hard to implement and costly to maintain. The provisions would make European services including user-uploaded content less competitive to other regions’. Companies are notoriously risk-averse, they will tend to make less content available, which is a loss for the entire sector.
- **Burden of reporting:** the information obligations are far-reaching. Informing a possibly unlimited number of rightsholders requires additional resources and might raise concerns over data protection - in particular for smaller startups.
- **Proportionality of content recognition:** next to technical and administrative feasibility, content recognition also poses a risk of false positives, fundamental rights,

Ancillary copyright in news snippets

Article 11: Neighbouring rights: Startup communities in Madrid & Berlin shared their experiences with the failure of their national laws: It didn’t help publishers, it hurt the startup ecosystem and the economy at large.

- It will **reduce media diversity** as small publishers lose visibility - a NERA study in Spain showed that after 3 month online traffic decreased by 6.1% on average, 13.5% for smaller publishers and have a **disproportionate impact on small startups** and publishers, consolidating the market position of large publishing houses;
- **Corrosive effect on the evolution of new services** without generating new revenue for publishers. In Spain and Germany Startups lost investment due to legal uncertainty around snippets;
- Is **incompatible with international copyright law** as it does not exclude ‘news of the day’ and miscellaneous facts’
- Creates **barriers to entry for startups**, and puts them at a competitive disadvantage versus services offered outside of Europe.

Startups in Europe had a strong year and are drawing a healthy and optimistic outlook for 2017 and beyond. Startups are living up to their role as the lifeblood of Europe's economies as that, are proof to the concept of a functioning ecosystem consisting of the right market, talent, capital, education and an healthy regulatory environment. A ecosystem they will find abroad if it doesn't exist in Europe. Predictability and certainty for entrepreneurial risk and venture capital are key elements to allow entrepreneurship in Europe to thrive.

An innovation exception for startups

Why an exemption for startups won't work... startups are entrepreneurial ventures that are typically newly emerged, fast-growing businesses who aim to bring a new innovative product to market. Attracting investment and scaling up are key to our success ([European Commission: Communication on Startups and Scale ups](#)). A copyright exemption for small businesses is a tempting yet bad idea. It creates a new glass ceiling for European startups who want to attract investors and scale up: as soon as we become successful, rightholders would capture all the value we create through hundreds of licences. No responsible investors will support a startup under those terms, and successfully scaling up becomes unlikely.

... and why the innovation exception is the answer: startups create new products and innovations that are unforeseeable and impossible to anticipate. Long legislative processes lag behind technological innovation by default and a closed list of existing copyright exceptions cannot be updated at the same speed. Take TDM as an example. The EU's fixed list of exceptions cannot accommodate new, innovative use-cases that startups explore everyday. Yet in many cases these new innovations do not harm rightholders.

A new, flexible, open-ended exception, based on international norms, would allow EU startups to flourish without reopening a legislative debate each time. When a startup develops a new use that harms neither rightholders nor their markets, it should be allowed. . An open ended copyright exception based on the "3-step test" means a new exception for

- new uses,
- which are certain special cases,
- provided that the new use in question does not conflict with a normal exploitation of the work,
- and does not unreasonably prejudice the legitimate interests of the author.

[Our academic paper on the EU Copyright Reform and Startups addresses the issues more in depth.](#)